

SENATE, No. 2312

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MARCH 22, 2018

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Concerns combined sewer overflows; exempts improvements thereto from 2% property tax cap; requires certain permit holders address such overflows in capital improvement plans; and appropriates \$5 million.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning combined sewer overflows, amending
2 P.L.1976, c.68 and P.L.2007, c.62, supplementing Title 58 of the
3 Revised Statutes, and making an appropriation.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) As used in this act:

9 “Combined sewer overflow” means the discharge of untreated or
10 partially treated stormwater runoff and wastewater from a combined
11 sewer system into a body of water.

12 “Combined sewer system” means a sewer system designed to
13 carry sanitary wastewater at all times, which is also designed to
14 collect and transport stormwater runoff from streets and other
15 sources, thereby serving a combined purpose.

16 “Department” means the Department of Environmental
17 Protection.

18 “Green infrastructure” means infrastructure that mimics natural
19 processes by restoring, preserving, or performing the same function
20 as natural hydrological systems, such as by utilizing the ability of
21 natural systems to absorb water and filter out pollutants. “Green
22 infrastructure” includes, but is not limited to, using permeable pave-
23 ment to allow the ground to absorb more stormwater, using trees
24 and green roofs to store water or convert it to vapor, and capturing
25 rainwater in cisterns or barrels for later use.

26 “Green roof” means a roof that includes, among other things, a
27 growth medium and a vegetation layer of drought resistant and
28 hardy plant species, designed to improve stormwater management.

29 “Permittee” means a person issued, by the department, a
30 combined sewer systems general permit, or any other general
31 permit, required pursuant to the “Water Pollution Control Act,”
32 P.L.1977, c.74 (C.58:10A-1 et seq.) to regulate combined sewer
33 overflows. A “permittee” includes the owner or operator of a
34 combined sewer system.
35

36 2. (New section) a. Every permittee shall identify measures
37 to abate or prevent combined sewer overflows, and shall submit to
38 the department, within one year after the date of enactment of this
39 act, a plan for implementing such measures as may be appropriate.
40 The plan shall include consideration of the use of green
41 infrastructure.

42 b. If a permittee has a capital improvement plan, capital master
43 plan, long-term control plan, or other similar plan, the permittee
44 may, with the permission of the department, submit that plan to the
45 department in lieu of the plan required pursuant to subsection a. of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 this section, provided that the capital improvement plan, capital
2 master plan, long-term control plan, or other similar plan includes
3 measures to abate or prevent combined sewer overflows, with
4 consideration of the use of green infrastructure.

5
6 3. (New section) a. There is created in the Department of
7 Environmental Protection a special non-lapsing fund to be known as
8 the "Combined Sewer Overflow Solutions Fund." There shall be
9 deposited in the fund monies appropriated pursuant to this act, any
10 other appropriations as may be made thereto by law, and any
11 interest or other income earned thereon.

12 b. Monies in the fund shall be used for the purposes of abating
13 or preventing combined sewer overflows, and shall be distributed as
14 grants to permittees for projects to abate or prevent combined sewer
15 overflows. Priority consideration for the awarding of grants
16 pursuant to this section shall be provided to projects that include
17 green infrastructure. Grants may be awarded only to an eligible
18 permittee for projects developed pursuant to the plan required
19 pursuant to section 2 of this act.

20 c. The department shall adopt, pursuant to the "Administrative
21 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
22 regulations establishing eligibility, funding policies, and priority
23 ranking criteria for projects that may receive grants from the
24 Combined Sewer Overflow Solutions Fund.

25 d. (1) At least once each State fiscal year, the Commissioner of
26 Environmental Protection, in consultation with the State Treasurer,
27 shall compile information concerning applications for grants from
28 the Combined Sewer Overflow Solutions Fund. The information
29 shall include a list of the applications received, amounts requested,
30 amounts to be granted, and purposes for which the grants will be
31 used.

32 (2) The commissioner shall submit to the Legislature a list of
33 projects and approved grant recipients that the department
34 recommends to receive funding from the Combined Sewer
35 Overflow Solutions Fund, based upon the eligibility, funding
36 policies, and priority ranking criteria established by the department
37 pursuant to rules and regulations adopted pursuant to subsection c.
38 of this section.

39 (3) Monies deposited in the fund shall be appropriated by the
40 Legislature only for grants to permittees for projects that abate or
41 prevent combined sewer overflows, based on recommendations
42 from the Commissioner of Environmental Protection in consultation
43 with the State Treasurer pursuant to paragraph (1) of this
44 subsection.

45 e. Prior to distribution, monies deposited in the fund shall be
46 held in interest-bearing accounts in public depositories as defined
47 pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and may be
48 invested or reinvested in such securities as are approved by the

1 State Treasurer. Interest or other income earned on monies
2 deposited in the fund, and any monies which may be appropriated
3 or otherwise become available for the purposes of the fund, shall be
4 credited to and deposited in the fund for use as set forth in this act.

5 f. The Commissioner of Environmental Protection shall
6 annually report to the Legislature, pursuant to section 2 of
7 P.L.1991, c.164 (C.52:14-19.1), on expenditures from the
8 Combined Sewer Overflow Solutions Fund and activities of the
9 grant recipients.

10
11 4. (New section) There is appropriated from the General Fund
12 to the Combined Sewer Overflow Solutions Fund, established
13 pursuant to section 3 of this act, the sum of \$5,000,000.

14
15 5. Section 4 of P.L.1976, c.68 (C.40A:4-45.4) is amended to
16 read as follows:

17 4. In the preparation of its budget, a county may not increase
18 the county tax levy to be apportioned among its constituent
19 municipalities in excess of 2.5% or the cost-of-living adjustment,
20 whichever is less, of the previous year's county tax levy, subject to
21 the following exceptions:

22 a. The amount of revenue generated by the increase in
23 valuations within the county, based solely on applying the
24 preceding year's county tax rate to the apportionment valuation of
25 new construction or improvements within the county, and such
26 increase shall be levied in direct proportion to said valuation;

27 b. Capital expenditures, including appropriations for current
28 capital expenditures, whether in the capital improvement fund or as
29 a component of a line item elsewhere in the budget, provided that
30 any such current capital expenditures would be otherwise bondable
31 under the requirements of N.J.S.40A:2-21 and 40A:2-22;

32 c. (1) An increase based upon emergency temporary
33 appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent
34 situation or event which immediately endangers the health, safety or
35 property of the residents of the county, and over which the
36 governing body had no control and for which it could not plan and
37 emergency appropriations made pursuant to N.J.S.40A:4-46.
38 Emergency temporary appropriations and emergency appropriations
39 shall be approved by at least two-thirds of the governing body and
40 by the Director of the Division of Local Government Services, and
41 shall not exceed in the aggregate 3% of the previous year's final
42 current operating appropriations.

43 (2) (Deleted by amendment, P.L.1990, c.89.)

44 The approval procedure in this subsection shall not apply to
45 appropriations adopted for a purpose referred to in subsection d. or
46 f. below;

47 d. All debt service;

48 e. (Deleted by amendment, P.L.1990, c.89.)

1 f. Amounts required to be paid pursuant to (1) any contract
2 with respect to use, service or provision of any project, facility or
3 public improvement for water, sewerage, parking, senior citizen
4 housing or any similar purpose, or payments on account of debt
5 service therefor, between a county and any other county,
6 municipality, school or other district, agency, authority,
7 commission, instrumentality, public corporation, body corporate
8 and politic or political subdivision of this State; and (2) any lease of
9 a facility owned by a county improvement authority when the lease
10 payment represents the proportionate amount necessary to amortize
11 the debt incurred by the authority in providing the facility which is
12 leased, in whole or in part;

13 g. That portion of the county tax levy which represents funding
14 to participate in any federal or State aid program and amounts
15 received or to be received from federal, State or other funds in
16 reimbursement for local expenditures. If a county provides
17 matching funds in order to receive the federal or State or other
18 funds, only the amount of the match which is required by law or
19 agreement to be provided by the county shall be excepted;

20 h. (Deleted by amendment, P.L.1987, c.74.)

21 i. (Deleted by amendment, P.L.1990, c.89.)

22 j. (Deleted by amendment, P.L.1990, c.89.)

23 k. (Deleted by amendment, P.L.1990, c.89.)

24 l. (Deleted by amendment, P.L.2004, c.74.)

25 m. (Deleted by amendment, P.L.1990, c.89.)

26 n. (Deleted by amendment, P.L.1990, c.89.)

27 o. (Deleted by amendment, P.L.1990, c.89.)

28 p. Extraordinary expenses, approved by the Local Finance
29 Board, required for the implementation of an interlocal services
30 agreement;

31 q. Any expenditure mandated as a result of a natural disaster,
32 civil disturbance or other emergency that is specifically authorized
33 pursuant to a declaration of an emergency by the President of the
34 United States or by the Governor;

35 r. Expenditures for the cost of services mandated by any order
36 of court, by any federal or State statute, or by administrative rule,
37 directive, order, or other legally binding device issued by a State
38 agency which has identified such cost as mandated expenditures on
39 certification to the Local Finance Board by the State agency;

40 s. That portion of the county tax levy which represents funding
41 to a county college in excess of the county tax levy required to fund
42 the county college in local budget year 1992;

43 t. (Deleted by amendment, P.L.2004, c.74.)

44 u. Expenditures for the administration of general public
45 assistance pursuant to P.L.1995, c.259 (C.40A:4-6.1 et al.);

46 v. Amounts in a separate line item of a county budget that are
47 expended on tick-borne disease vector management activities
48 undertaken pursuant to P.L.1997, c.52 (C.26:2P-7 et al.);

1 w. Amounts expended by a county under an interlocal services
2 agreement entered into pursuant to the "Interlocal Services Act,"
3 P.L.1973, c.208 (C.40:8A-1 et al.) entered into after the effective
4 date of P.L.2000, c.126 (C.52:13H-21 et al.) or amounts expended
5 under a joint contract pursuant to the "Consolidated Municipal
6 Service Act," P.L.1952, c.72 (C.40:48B-1 et seq.) entered into after
7 the effective date of P.L.2000, c.126 (C.52:13H-21 et al.);

8 x. Amounts appropriated in the first three years after the
9 effective date of P.L.2003, c.92 (C.18A:7F-5b et al.) for liability
10 insurance, workers' compensation insurance and employee group
11 insurance;

12 y. Amounts appropriated in the first three years after the
13 effective date of P.L.2003, c.92 (C.18A:7F-5b et al.) for costs of
14 domestic security preparedness and responses to incidents and
15 threats to domestic security;

16 z. Expenditures of amounts received pursuant to section 5 of
17 P.L.1981, c.278 (C.13:1E-96).

18 In the first full year where an existing appropriation or
19 expenditure that is subject to budget limitations is made an
20 exception to budget limitations, a county shall deduct from its final
21 appropriations upon which its permissible expenditures are
22 calculated pursuant to section 2 of P.L.1976, c.68 (C.40A:4-45.2)
23 the amount which the county expended for that purpose during the
24 last full budget year, or portion thereof, in which the purpose so
25 excepted was funded from appropriations in the county budget.

26 In the first full year where an existing appropriation or
27 expenditure that is not subject to budget limitations is made subject
28 to budget limitations, a county shall add to its final appropriations
29 upon which its permissible expenditures are calculated pursuant to
30 section 2 of P.L.1976, c.68 (C.40A:4-45.2) the amount which the
31 county expended for that purpose during the last full budget year, or
32 portion thereof, in which the purpose so excepted was funded from
33 appropriations in the county budget.

34 For the purposes of this section, capital expenditures and debt
35 service shall include those expenditures for, or debt arising from,
36 paying the cost of abating or preventing combined sewer overflows,
37 as defined pursuant to section 1 of P.L. , c. (C.) (pending
38 before the Legislature as this bill).

39 (cf: P.L.2007, c.311, s.18)

40
41 6. Section 10 of P.L.2007, c.62 (C.40A:4-45.45) is amended to
42 read as follows:

43 10. a. (1) In the preparation of its budget the amount to be
44 raised by taxation by a local unit shall not exceed, except as
45 provided in paragraph (2) of this subsection, the sum of new
46 ratables, the adjusted tax levy, and the total of waivers approved
47 pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46); provided,
48 however, that in the case of a county, the amount to be raised by

1 taxation shall not exceed the amount permitted by section 4 of
2 P.L.1976, c.68 (C.40A:4-45.4).

3 (2) A local unit that has not been granted approval for a waiver
4 pursuant to section 11 of P.L.2007, c.62 (C.40A:4-45.46), may add
5 to its adjusted tax levy in any one of the next three succeeding
6 years, the amount of the difference between the maximum
7 allowable amount to be raised by taxation or county purposes tax,
8 as applicable, for the current local budget year pursuant to
9 paragraph (1) of this subsection and the actual amount to be raised
10 by taxation or county purposes tax, as applicable, for the current
11 local budget year.

12 b. The following exclusions shall be added to the calculation of
13 the adjusted tax levy:

14 increases in amounts required to be raised by taxation for capital
15 expenditures, including debt service as defined by law; increases in
16 pension contributions and accrued liability for pension
17 contributions in excess of 2.0%; increases in health care costs equal
18 to that portion of the actual increase in total health care costs for the
19 budget year that is in excess of 2.0% of the total health care costs in
20 the prior year, but is not in excess of the product of the total health
21 care costs in the prior year and the average percentage increase of
22 the State Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et
23 seq.), as annually determined by the Division of Pensions and
24 Benefits in the Department of the Treasury; and extraordinary costs
25 incurred by a local unit directly related to a declared emergency, as
26 defined by regulation promulgated by the Commissioner of the
27 Department of Community Affairs, in consultation with the
28 Commissioner of Education, as appropriate.

29 If there are no exclusions, then the amount of the difference shall
30 reduce the adjusted tax levy by that amount. Any cancelled or
31 unexpended appropriation for any exclusion pursuant to this
32 subsection or waiver pursuant to section 11 of P.L.2007, c.62
33 (C.40A:4-45.46), also shall be deducted from the sum of the
34 exclusions listed in this subsection or directly reduce the adjusted
35 tax levy if there are no exclusions.

36 For the purposes of this subsection, capital expenditures,
37 including debt service, shall include those expenditures made for
38 the purposes of paying the cost of abatement or prevention of
39 combined sewer overflows, as defined pursuant to section 1 of
40 P.L. , c. (C.) (pending before the Legislature as this bill).
41 (cf: P.L.2010, c.44, s.9)

42
43 7. This act shall take effect immediately.

44
45 STATEMENT

46
47 This bill would help address pollution caused by combined sewer
48 overflows (CSO) by: (1) establishing certain planning requirements

1 for entities possessing general permits for combined sewer systems;
2 (2) providing an exemption from the property tax levy cap for
3 capital expenditures and debt service of combined sewer overflow
4 abatement and prevention measures; (3) creating a “Combined
5 Sewer Overflow Solutions Fund” in the Department of
6 Environmental Protection (DEP) to fund efforts to abate or prevent
7 CSOs; and (4) appropriating \$5 million for that purpose.

8 An entity issued a general permit for a combined sewer system
9 by the DEP under the New Jersey Pollutant Discharge Elimination
10 System (NJPDES) program pursuant to the “Water Pollution
11 Control Act” to regulate CSOs (a “permittee”) would be required to
12 identify measures to abate or prevent CSOs and submit to the DEP,
13 within one year after the date of enactment of the bill into law, a
14 plan to implement such measures as may be appropriate, including
15 the possible use of green infrastructure. If an entity with a
16 combined sewer system general permit has a capital improvement
17 plan, capital master plan, long-term control plan, or other similar
18 plan, the permit holder may, with the department’s permission,
19 submit such a plan to the DEP in lieu of a separate plan, provided
20 that the plan includes measures to abate or prevent CSOs and
21 provides for consideration of the use of green infrastructure.

22 This bill would amend existing law to authorize capital
23 expenditures and debt service, currently exempted from the 2%
24 county and municipal property tax cap, to explicitly include those
25 expenditures for, or debt arising from, payment toward the cost of
26 measures to abate or prevent CSOs.

27 Finally, the bill appropriates \$5 million from the General Fund to
28 the “Combined Sewer Overflow Solutions Fund,” established under
29 section 3 of the bill. Funding recommendations would be made by
30 the Commissioner of the DEP and would be submitted to the
31 Legislature, after which monies in the fund would be appropriated
32 by the Legislature.